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EEOC's 2026 National Enforcement Plan and Related Actions: What Changed and What Employers Should Do Now

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KEY POINTS

- The EEOC's new National Enforcement Plan signals a shift away from disparate impact enforcement and LGBTQI+ protections, redirecting focus toward DEI-related practices, national origin issues, gender identity, and religious liberty.
- Employers with voluntary affirmative action plans face increased uncertainty after the EEOC rescinded its 1979 affirmative action guidance and eliminated the companion compliance manual section on June 30, 2026, removing the principal interpretive safe harbor employers had relied on for nearly five decades.
- The EEOC voted in July 2026 to advance a proposed rule that would eliminate annual EEO-1 workforce demographic reporting requirements, though existing obligations remain in effect during the rulemaking process.
- On January 23, 2026, the Commission voted to require chair and commissioner approval for all new lawsuits, meaning the agency's litigation docket will more closely track the NEP's five enforcement priorities.
- Multistate employers face a complex compliance environment: federal enforcement priorities do not preempt state and local laws, which in many jurisdictions impose broader harassment protections and require gender identity accommodations the NEP does not reflect.

Private-sector employers covered by Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA) should take note of the Equal Employment Opportunity Commission's (EEOC) new National Enforcement Plan (NEP), which signals where the agency will focus its investigative and litigation resources through 2029, as well as the EEOC's related actions to limit voluntary affirmative action plan safe harbors and EEO-1 data reporting requirements.

THE NEP'S FIVE ENFORCEMENT PRIORITIES

Under Chair Andrea Lucas and the second Trump administration, the EEOC confirmed that it is stepping back from disparate impact enforcement, LGBTQI+ protections, and "vulnerable worker" initiatives. Instead, it is turning its attention toward diversity, equity, and inclusion (DEI)-related practices, national origin issues framed around protecting American workers, gender identity, religious rights, and centralized litigation aligned with these priorities, each discussed in more detail below.

Priority 1: DEI Is Under the Microscope

As the current administration has already signaled, one of the EEOC's top areas of focus is intentional discrimination tied to DEI initiatives. The March 2025 joint technical assistance from the Department of Justice (DOJ) and the EEOC was direct: Title VII protects all races and both sexes equally, and calling something a "DEI program" does not insulate it if it influences employment decisions based on protected characteristics.

The EEOC is focused on programs that appear to establish preferences or are designed to drive demographic outcomes. According to the NEP, red flags include:

- Quotas or numeric targets, including "aspirational" ones;
- Diverse-slate requirements tied to results;
- Compensation, evaluations, or manager scorecards linked to demographic goals;
- Mandatory diversity attestations;
- Race- or sex-segregated affinity groups or events;
- Benefits or opportunities limited by protected characteristics; and
- Publicly released DEI metrics or environmental, social, and governance disclosures suggesting hiring or promotion decisions tied to demographic targets.

The EEOC is being proactive in its posture. Lucas has publicly encouraged white male employees who believe they were disadvantaged by DEI programs to file charges. Combined with the Supreme Court's recent elimination of the heightened pleading standard that had applied to reverse-discrimination plaintiffs,[1] the practical plaintiff pool for bringing discrimination claims against employers is meaningfully larger than it was two years ago.

Employers with voluntary affirmative action plans face additional uncertainty given the DOJ's challenge to longstanding precedent upholding those programs.[2] On June 30, 2026, the EEOC finalized the rescission of its 1979 voluntary affirmative action guidance and simultaneously eliminated Section 607 of its Compliance Manual, a 1981 document providing practical guidance on lawful affirmative action plan design. Together, these had constituted the principal interpretive framework employers had relied on for nearly five decades. Lucas framed the rescission in constitutional terms — Title VII demands equal treatment, not equal outcomes — the same thread running through the agency's DEI enforcement priorities and its position on disparate impact.

Employers with voluntary affirmative action plans should consider reviewing them now. Without the interpretive safe harbor, any program that considers protected characteristics, even in limited or well-intentioned ways, could carry the risk of increased scrutiny and legal risk.

Priority 2: Protecting American Workers

The NEP signals closer scrutiny of practices that — intentionally or in effect — favor noncitizens or guest-worker visa holders in lieu of qualified American workers. This is consistent with the EEOC's November 2025 technical assistance, Discrimination Against American Workers Is Against the Law, which encouraged employers to use neutral, job-related criteria, document legitimate business reasons, and train recruiters and managers to apply standards consistently. Further, the EEOC is expected to rescind its 1980 national origin discrimination guidance, citing, among other things, its belief that the guidance's presumption that English-only rules violate Title VII in some circumstances is no longer correct. While that rescission may signal a shift in enforcement priorities, it should not be read as relaxing obligations. Despite these changes, Title VII's prohibition on national origin discrimination is unchanged, and broad English-only policies or blanket citizenship preferences may still create liability under federal and state law.

Employers should consider reviewing job postings, recruiting channels, and selection criteria for language that could be read as preferring visa holders or permanent residents.

Priority 3: Gender Identity – Conflict Ahead

On January 22, 2026, the EEOC voted 2-1 to rescind its April 2024 Harassment Guidance following Executive Order 14168 (Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government) after a federal court vacated the guidance's gender identity and sexual orientation provisions.[3] In the NEP, the agency indicated it is actively seeking cases to press a narrower reading of *Bostock v. Clayton County*, 590 U.S. 644 (2020), which held that Title VII's prohibition on sex discrimination encompasses sexual orientation and gender identity. Employers should expect particular attention on bathroom access, pronoun disputes, and other transgender-related claims.

The NEP also elevates religious accommodations for employees who object to transgender or LGBTQI+ colleagues, raising a practical question about where accommodation ends and unlawful harassment begins. Multistate employers face an added layer of complexity as some state laws protect transgender status or even require bathroom access consistent with an employee's gender identity, which may conflict directly with the EEOC's current posture.

While the legal landscape is becoming more complex, Title VII's prohibition on sex discrimination remains in force, and many courts continue to recognize protections for transgender employees regardless of Executive Order 14168. Those in education and education-adjacent sectors should also anticipate overlap between Title VII and Title IX, as the EEOC is coordinating with the Department of Education on Title IX enforcement.

Priority 4: Religious Liberty as an Affirmative Enforcement Focus

Religious liberty is a freestanding enforcement priority under the NEP, not just a backdrop to Priority 3. The EEOC is actively pursuing claims in which sincerely held religious beliefs were not reasonably accommodated and in which employers penalized employees for expressing or acting on those beliefs.

Employers who require DEI training participation, mandate the use of preferred pronouns, or tie affinity group involvement to advancement may face accommodation requests from employees whose religious beliefs conflict, and employers should be aware that inadequate responses can generate EEOC charges. At the same time, federal enforcement priorities do not preempt state and local law, and in many jurisdictions, the obligations run in the opposite direction. Many states and localities continue to encourage DEI efforts, apply broader harassment protections, and require gender identity accommodations that the NEP does not reflect. A policy calibrated solely to federal enforcement posture may create exposure under state or local law, and vice versa.

Employers should consider reviewing their accommodation and complaint procedures to ensure they are ready to respond to employee requests and complaints on both sides of this issue, and under both federal and state law, and avoid a one-size-fits-all approach, particularly for multistate employers who may be under varying obligations.

Priority 5: Litigation Decisions Move to Washington

On January 23, 2026, the Commission voted 2-1 to require chair and commissioner approval for all new lawsuits and interventions. As the EEOC noted in the NEP, employers should expect the EEOC's docket to track each of the NEP priorities noted above more closely. The agency has indicated it may also expand its reach by intervening or filing amicus briefs in cases brought by state attorneys general.

EEO-1 DATA REPORTING OBLIGATIONS MAY BE RESCINDED

Covered employers have been required to file annual EEO-1 workforce demographic reports since 1966, submitting an annual accounting of their workforce by race, ethnicity, sex, and job category. On July 21, 2026, the EEOC voted 2-1 to move forward with a proposed rule that would eliminate this requirement, along with several related surveys. The EEOC contends that the data is unnecessary for enforcement, the compliance burden outweighs any benefit, and that the requirement may encourage employers to discriminate.

While the fate of the proposal remains uncertain as the EEOC's efforts navigate the rulemaking process, existing obligations remain in effect. Further, even if the proposal does ultimately result in a rescission, multistate employers should consider whether state law may continue to require demographic data collection.

ENDNOTES

[1] *Ames v. Ohio Dep't of Youth Servs.*, 145 S. Ct. 1540 (2025) (eliminating the heightened pleading standard for reverse-discrimination plaintiffs; the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) burden-shifting framework applies regardless of majority or minority status).

[2] The DOJ has argued that *Johnson v. Transportation Agency*, 480 U.S. 616 (1987) and *United Steelworkers of Am. v. Weber*, 443 U.S. 193 (1979) — both upholding voluntary affirmative action – were wrongly decided on textualist grounds. If that view gains traction, voluntary affirmative action under Title VII faces additional uncertainty beyond the rescission of the 1979 interpretive guidance.

[3] *Texas v. EEOC*, No. 2:24-cv-00173 (N.D. Tex. May 15, 2025) (vacating portions of the April 2024 Harassment Guidance addressing gender identity and sexual orientation).

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